

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 2:09-cr-00003-JPH-CMM
)
DAVID B. HEARNE,) -01
)
Defendant.)

ORDER

David Hearne filed a motion asking if he is entitled to a sentence reduction under the First Step Act or 18 U.S.C. § 3582(c)(2). Dkt. 49. The Court ordered Mr. Hearne to supplement his motion and the government to respond. Dkt. 56; dkt. 58. Mr. Hearne did not file a supplement and the government has responded, arguing that Mr. Hearne has not supported his request with argument or authority and that regardless no statute entitles him to relief. Dkt. 59. Mr. Hearne has not replied.

Mr. Hearne has not shown that he is eligible for a sentence reduction under either the First Step Act or 18 U.S.C. § 3582(c)(2). *See* dkt. 49. For the First Step Act, he does not specify any provision that may apply, *see id.*, and the First Step Act is generally not retroactive, *United States v. Jackson*, 940 F.3d 347, 353 (7th Cir. 2019). One section that is retroactive—§ 404, which made portions of the Fair Sentencing Act retroactive—does not apply because Mr. Hearne’s conviction did not involve cocaine base. *See United States v.*

Garrett, No. 1:03-cr-00062-SEB-DML, 2019 WL 2603531 at *1-2 (S.D. Ind. June 25, 2019).

And § 3582(c)(2)'s sentence-reduction provision applies only when a defendant "has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o)." Mr. Hearne has not argued—or even alleged—that his sentencing range has changed.

Mr. Hearne therefore has not shown that he is eligible for a sentence reduction under the First Step Act or 18 U.S.C. § 3582(c)(2). His motion for a sentence reduction is **DENIED**. Dkt. [49].

SO ORDERED.

Date: 12/9/2019

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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